



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/577,813

07/31/2006

Emmanouil Domazakis

CFAV-6

6974

52450

7590

12/23/2009

KRIEG DEVAULT LLP
ONE INDIANA SQUARE
SUITE 2800
INDIANAPOLIS, IN 46204-2079

EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,813	Applicant(s) DOMAZAKIS, EMMANOUIL	
	Examiner Lien T. Tran	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

All previous 112 second paragraph and 103 rejections are hereby withdrawn.

Claims 1-2 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Applicant claims a method for preparing a croissant shaped pastries. The method includes the step of preparing an emulsion by adding olive oil, dextrose, fructose and egg yolk. However, there is no teaching of how much olive oil, dextrose, fructose and egg yolk to use. The step requires homogenization in a high-speed mixer; but, there is no teaching of the parameters to carry out the homogenization. For example, how high is the speed and how long does one carry out the step? The step of preparing a liquid leaven requires inoculation of rye flour substrate with specially formulated microbial cultures. However, the specification does not teach what these microbial cultures are. How does one prepare these cultures. Step c require mixing flour and water with a quantity of the liquid leaven; however, there is no teaching of how much flour, water and liquid leaven to use. The same problem is noted with step d; there is no teaching of the amounts of flour, water, emulsion, sugar, eggs, olive oil and baker's leaven to use. It is not known what would be considered as baker's leaven; is this a chemical leavening agent or yeast or bacteria or something other thing. The specification has no teaching that shows one skilled in the art of the ingredient to use as baker's leaven. Step f requires passing the dough to a series of dough rotors; but, the specification does not teach one skilled in the art the type of rotors to use. There is

Art Unit: 1794

absolutely no teaching of the equipment that qualifies to carry out this step. The same problem is noted for step g. There is no disclosure to the type of equipment that can be used to carry out the step. Step j requires cooling in the presence of high microbial quality air. It is not known what kind of air would be considered as “high microbial quality air”; one skilled in the art would not know what cooling air to use to carry out the step. Step k requires placing the baked product in a modified atmosphere; but, the specification does not teach how this modified atmosphere is obtained. The specification gives a general outline of the method but does not teach the specific required parameters to carry out the method. Reading the specification, one skilled in the art would not know how to carry out the method for the reasons set forth.

Claims 1-2 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1: Lines 2-3, what does applicant mean by direct and indirect incorporation; what would be considered as direct or indirect. Line 3, the recitation of “the pastries’ dough” does not have antecedent basis. Line 4, the recitation of “the high melting point animal fat, the margarine” does not have antecedent basis. Line 7, the term “high-speed mixer” is indefinite because it is relative; what would be considered as high? Line 8, the recitation of “the subsequent” does not have antecedent basis; it is suggested applicant deletes the word “the”. Line 9 has the same problem as line 8 with respect to the recitation of “the inoculation”. Line 10, the recitation of “specialty formulated microbial cultures” is indefinite because it is not known what kind of cultures

Art Unit: 1794

is required to be considered specialty formulated microbial cultures. Line 17, the recitation of " the remaining ingredients" does not have antecedent basis. Line 18, the recitation of " baker's leaven" is indefinite because it is not known what ingredient is considered baker's leaven; is it yeast, chemical leavener, bacteria or something other thing? Line 22, the recitation of " the dough sheets" does not have antecedent basis. Line 24, it is not clear how the phrase " this procedure" is related to the step. Line 35, the recitation of " high microbial quality air" is indefinite because it is not known what kind of air would be considered as high microbial quality air.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dijkshoorn et al.

Dijkshoorn et al disclose a baked filled product comprising a filling enclosed inside a bread dough casing. The filling is a meat-based filling comprising cheese. The food product has an elongated shape but other shapes like cubes, balls and egg-shaped are possible as well. The bread dough comprises wheat flour, water, margarine, sugar, yeast, glucose, milk powder salt and egg yolk. (see col. 3 and example 1)

The dough product of Dijkshoorn et al differs from the claimed product in the way it is made; however, determination of patentability in product-by-product claim is based on the product itself. Dijkshoorn et al do not disclose the use of olive oil, fructose, monoglycerides and the shape of croissant.

Dijkshoorn et al disclose the use of margarine which is a source of fat. It is well known in the art to substitute margarine for butter, oil or shortening depending on the

Art Unit: 1794

flavor, taste, nutrition desired. The selection of the type of fat used is also affected by the cost factor and regional preference. It would have been obvious to substitute olive oil for margarine when desiring a healthier fat. It would have been obvious to select any type of sugar depending on the sweetness intensity and the flavor desired. The selection of the type of sugar would have been an obvious matter of preference. It would have been obvious to add a well known emulsifier such as monoglyceride to give softness to the product. This additive is well known to be used for such purpose. Using an additive for its art-recognized function would have been obvious to one skilled in the art. It would have been obvious to form the product in any shape desired; this would have been an obvious matter of preference.

Claim 1 is free of prior art because there is no teaching of the sequence of steps as claimed. Specifically, there is no teaching of the steps of forming an emulsion, forming a liquid leaven and maturing the dough filled with meat.

Applicant's arguments with respect to claims 1-2 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 20, 2009

/Lien T Tran/

Primary Examiner, Art Unit 1794